

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

HARD CANDY, LLC, a Florida limited liability company,
Plaintiff,
vs.
SCOTT C. TUSCANI d/b/a "HARD CANDY", an individual residing in California,
Defendant.

) Case No. CV10- 2700 CAS (JEMx)
)
)
) **[PROPOSED] ORDER RE JOINT**
) **STIPULATED PROTECTIVE**
) **ORDER**
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JOINT STIPULATED PROTECTIVE ORDER

Pursuant to Federal Rule of Civil Procedure 26(c), in order to facilitate discovery and particularly to facilitate the exchange during discovery of documents, things, information, testimony, and other evidence that comprise confidential information, and based on the stipulation of the parties through their counsel, as indicated below, and their request that the Court enter the following Order:

1
2 **IT IS HEREBY ORDERED** as follows:

3 **1. Types of Information for Protection Under This Order**

4 Documents and things reasonably considered in good faith by a party to contain
5 either: (a) proprietary or confidential financial or business information, (b)
6 technological or trade secret information, (c) proprietary or confidential sales or
7 customer information, or (d) proprietary or confidential corporate or strategic planning
8 information, may be designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
9 -- COUNSEL ONLY,” depending on the sensitivity of the documents and things. The
10 designation “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” shall be reserved for
11 information that would, in the good faith belief of the producing party, be likely to
12 cause harm to the competitive position of the producing party if disclosed to the party
13 or non-party receiving the information.

14 The parties agree not to designate information as “CONFIDENTIAL” or
15 “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” for the purpose of harassing the
16 receiving party or for the purpose of unnecessarily restricting the receiving party’s
17 access to information concerning the lawsuit. Documents and things designated as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL ONLY,” and the
19 information contained therein, shall be hereinafter referred to collectively as
20 “Confidential Information.”

21 **2. Legend**

22 Each production item designated as Confidential Information shall bear the
23 words “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” in
24 a conspicuous place on that item.

25 **3. Disclosure of Information Designated as “CONFIDENTIAL”**

26 All documents and things produced by a party to this action for inspection and
27 copying and which are designated as “CONFIDENTIAL” by the producing party, and
28 the information contained therein, shall be kept confidential, and shall not be

1 communicated in any manner by the receiving party or parties, either directly or
2 indirectly, to any person or entity other than:

3 (a) Outside counsel for the parties in this action, and their respective
4 associates, clerks, legal assistants, stenographic and support personnel, and other
5 employees of such outside counsel;

6 (b) In-house legal personnel who are responsible for and/or working
7 directly in the prosecution or defense of this action, as well as the necessary support
8 personnel such as paralegal, secretarial, and clerical personnel;

9 (c) Up to four (4) employees, officers, directors, managers or members
10 of the receiving party, other than those identified in paragraph 3(b), who are involved in
11 or have responsibility for this action;

12 (d) Independent experts and consultants, and the employees of such
13 experts and consultants who are assisting them, retained for the purpose of assisting
14 counsel in this litigation;

15 (e) Any certified shorthand or court reporters or persons operating
16 video equipment at depositions retained to report a deponent's testimony in this case;

17 (f) Third party entities, and the employees of said third party entities,
18 retained to provide support services in this action, such as jury consultants (not
19 including mock jurors), document copying and imaging service providers, and
20 graphics service providers;

21 (g) The Court, including its clerks, reporters, and staff;

22 (h) Any person who is an author or addressee of such document or
23 thing, or a person copied thereof; and

24 (i) Such other persons as hereafter may be designated by written
25 agreement of all parties in this action or by Order of the Court, such Order obtained on
26 noticed motion (or on shortened time as the Court may allow), permitting such
27 disclosure.

28 Documents and things, and the information contained therein, designated as

1 “CONFIDENTIAL” shall be received and used only for purposes directly related to
 2 this action and not for promotional, competitive, or other purposes. If any document
 3 or thing, or the information contained therein, designated as “CONFIDENTIAL” is
 4 filed with the Court, it shall be filed consistent with the provisions of paragraph 8
 5 below.

6 **4. Disclosure of Information Designated as “HIGHLY**
 7 **CONFIDENTIAL -- COUNSEL ONLY”**

8 All documents and things produced by a party to this action for inspection and
 9 copying and which are designated as “HIGHLY CONFIDENTIAL -- COUNSEL
 10 ONLY” by the producing party, and the information contained therein, are included
 11 within the meaning of “Confidential Information” as used in this Order, and all of the
 12 provisions of this Order that apply to information designated as “CONFIDENTIAL”
 13 also apply to material designated as “HIGHLY CONFIDENTIAL -- COUNSEL
 14 ONLY.” However, all documents, information, and other things designated as
 15 “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” shall not be disclosed or
 16 communicated in any manner by the receiving party or parties, either directly or
 17 indirectly, to those persons listed in paragraph 3(c). Furthermore, such documents and
 18 things, and the information contained therein, shall be used only for purposes directly
 19 related to this action and shall not be used by the parties or the parties’ subsidiaries,
 20 employees, officers, directors, or agents for any other purpose. In addition,
 21 documents and things designated as “HIGHLY CONFIDENTIAL -- COUNSEL
 22 ONLY” may be disclosed to persons in the category described by paragraph 3(b)
 23 above, but such persons shall keep any copies of such materials or materials
 24 containing the Confidential Information contained therein in locked physical facilities
 25 to which access is granted only to individuals in such category or on secure portions
 26 of electronic networks to which access is controlled and permitted only to such
 27 individuals.
 28

1 **5. Depositions**

2 If depositions are conducted in this action involving information designated as
 3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” by a
 4 party, their content may be marked and treated in the same manner as documents and
 5 things. In the event that a party gives notice that deposition testimony to be given
 6 may involve information designated as “CONFIDENTIAL” or “HIGHLY
 7 CONFIDENTIAL -- COUNSEL ONLY” by a party, the portions of said depositions
 8 involving such information will be taken “in camera” with no one present except said
 9 attorneys, the reporter, the deponent, and such other persons as would be allowed to
 10 receive the information under paragraphs 3 and 4 above. Documents, information, or
 11 other things designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
 12 COUNSEL ONLY” are not to be presented to a deponent absent a reasonable basis for
 13 believing that the deponent had access to the Confidential Information prior to the
 14 deposition.

15 A party may designate a deposition transcript as “CONFIDENTIAL” or
 16 “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” by making a clear statement of
 17 the desired designation on the record at the deposition. If no such notice is given at
 18 the deposition, deposition transcripts shall be considered “HIGHLY
 19 CONFIDENTIAL -- COUNSEL ONLY” up to and including ten (10) days after
 20 delivery of the final transcript to the parties. Counsel shall have ten (10) days after
 21 receipt of a final deposition transcript to designate the transcript, or portions thereof
 22 (by specific page and line numbers), as “CONFIDENTIAL” or “HIGHLY
 23 CONFIDENTIAL -- COUNSEL ONLY.”

24 If any deposition testimony designated “CONFIDENTIAL” or “HIGHLY
 25 CONFIDENTIAL -- COUNSEL ONLY” is filed with the Court, it shall be filed
 26 consistent with the provisions of paragraph 8 below.

27 **6. Exclusion from Depositions**

28 Whenever any documents, information, or other things designated as

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” are to be
 2 discussed or disclosed in a deposition, any party claiming such confidentiality may
 3 exclude from the room any person who is not entitled to receive documents,
 4 information, or other things designated as “CONFIDENTIAL” or “HIGHLY
 5 CONFIDENTIAL -- COUNSEL ONLY.”

6 **7. Confidentiality Agreement**

7 Before the disclosure of Confidential Information to any person referred to in
 8 paragraph 3(b), (c), and (d) hereof, each such person shall execute a declaration, in the
 9 form attached hereto as Exhibit A, agreeing to be bound by the terms of this Order.
 10 The executed declarations shall be maintained by counsel for the party that has
 11 disclosed the Confidential Information.

12 **8. Filing Under Seal**

13 All Confidential or Highly Confidential Information filed with the
 14 Court shall be filed under seal pursuant to the following procedures:

15 (a) Entry of this Protective Order hereby constitutes “prior approval of
 16 the Court” under Local Rule 79-5.1, and submission of a document sealed in separate
 17 envelopes with a copy of the title page attached to the front of each envelope, as
 18 provided in Local Rule 79-5.1, together with a copy of this Order, constitutes
 19 compliance with Local Rule 79-5.1. No further order of the Court to authorize sealing
 20 will be required.

21 (b) Where reasonably practicable, only confidential portions of
 22 filings with the Court shall be filed under seal. Information filed under seal shall be
 23 placed in sealed envelopes on which it shall be endorsed with the title to this action,
 24 the words “FILED UNDER SEAL,” and a statement substantially in the following
 25 form:

26 “This envelope is sealed pursuant to order of the Court and contains
 27 Confidential Information [and/or Highly Confidential Information] filed
 28

1 in this case by [name of party] and is not to be opened or the contents
2 thereof to be displayed or revealed except by order of the Court.”

3
4 The envelope shall not be opened without further order of the Court except by persons
5 authorized to have access to such information pursuant to paragraph 3 or 4, as
6 applicable. Any envelope containing information filed under seal that is an exhibit to a
7 pleading shall also bear the name of the pleading. Where documents filed under seal
8 are transmitted between the parties, the above message shall be placed on the
9 transmitting letter, e-mail or facsimile cover sheet. A full and unredacted copy of any
10 such submission may be provided directly to chambers, marked “Chambers Copy”
11 and “Contains Confidential or Highly Confidential Information Subject to Protective
12 Order.”

13 (c) As soon as practicable, but in no event later than ten calendar
14 days after having filed paper copies of the submitted materials, the submitting party
15 shall file with the court, for its public file, a copy of the submitted materials with the
16 Confidential Information and/or Highly Confidential Information redacted.

17 (d) If any party objects to identified portions of the materials
18 remaining under seal, it shall, within ten business days of submission of the materials,
19 state its objections in a letter sent by facsimile or electronic mail to counsel for all
20 parties in this action. The interested parties shall promptly meet and confer to attempt
21 to resolve those objections and, if they cannot be resolved, shall promptly tender those
22 objections to the Court for resolution. Any revised public electronic filing, if any, of
23 that submission shall be made by the submitting party within ten business days after
24 the Court's decision resolving that dispute.

25 **9. Confidential Information at Trial or Hearing**

26 In connection with any oral hearing, trial, or proceeding before the Court, prior
27 to disclosure in open court of Confidential Information, attorneys for the party seeking
28 to make such disclosures shall request at or before the oral hearing, trial, or

proceeding that the Court treat any Confidential Information necessary to be disclosed in relation to such hearing, trial or proceeding in a manner appropriate to protect the confidentiality of the information.

10. Challenge to Designation as Confidential Information

A party may seek to challenge the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” designation made by another party. In such event, the following procedure shall be utilized:

(a) The party or person challenging the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” designation shall give counsel of record for the other party written notice thereof, supported by reasons therefor, specifying the document, information, or other thing as to which the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” designation is being challenged.

(b) If the parties cannot reach agreement concerning the matter within ten (10) business days after delivery of the notice, or such shorter time as the Court may allow, then the party making the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” designation may file and serve a motion for an Order of this Court for appropriate relief. Any such motion shall be set for the earliest possible date on the Court’s motion calendar, and shall not be continued without the consent of all parties. The party seeking to protect the information and/or document bears the burden, in any such motion, to establish the appropriateness of the protection or degree of protection sought. If after ten (10) business days after delivery of the notice, or such other time as the parties may agree, the party making the designation fails to file a motion for an Order of this Court to retain the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” designation, then the documents in dispute shall lose their designations.

(c) If a party decides to alter or to remove a “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL ONLY” designation, the producing party

1 shall produce to the other parties substitute copies of such documents bearing the
2 desired designation. The parties to whom the substitute copies of such documents are
3 produced shall substitute the later produced documents for the previously produced
4 documents, and destroy or return to the producing party the previously produced
5 documents.

6 No party shall be obligated to challenge the propriety of the designation of any
7 material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- COUNSEL
8 ONLY” upon its production in this case, and a failure to do so shall not preclude any
9 subsequent objection to such designation or motion for leave to disclose such material
10 or the information contained therein to persons not referred to in this Order, or from
11 otherwise modifying the provisions of this Order.

12 **11. No Waiver**

13 Neither the acceptance by a party of any Confidential Information, as defined
14 herein, nor the failure of a party to take any action to enforce the provisions of this
15 Order shall constitute a concession that the information, document, or thing is or is not
16 confidential or a trade secret.

17 **12. Return of Information**

18 Those documents, deposition transcripts, or other information identified by any
19 party as Confidential Information and all copies thereof, shall not be disclosed to any
20 person who is not an authorized recipient, and shall be carefully maintained so as to
21 preclude access by persons who are not authorized recipients. Within thirty (30) days
22 of the termination of this action (whether by settlement or final judgment and appeal,
23 if any), unless otherwise ordered by the Court, such documents shall be destroyed or
24 returned to the producing party.

25 In no event shall a party retain a copy of any Confidential Information produced
26 to it, except that outside litigation counsel may keep one copy of pleadings, court
27 filings, and discovery, including any Confidential Information contained therein, for
28 archival purposes. Nothing in this Order requires the return or destruction of attorney

1 work-product or attorney-client communications of either party that is maintained and
2 stored by counsel in the regular course of business. Furthermore, nothing in this
3 Order requires the return or destruction of Confidential Information filed with the
4 Court.

5 **13. Violations of the Protective Order**

6 If a party believes there has been a violation of this Order, the party shall
7 provide written notice of such belief to all other parties. The parties thereafter shall
8 informally attempt to resolve the matter promptly, but the responding party shall have
9 at least five (5) business days after receipt of the written notice of the alleged violation
10 to investigate the assertion. If the parties are unable to resolve the issue, then the party
11 asserting that a violation has occurred may move the Court for relief and give written
12 notice to all parties of its intent to so move.

13 **14. Failure to Designate Information**

14 If through error or oversight, a party fails to properly designate a document,
15 tangible thing, information, or testimony as “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL -- COUNSEL ONLY” at the time of production or disclosure, that
17 party shall promptly notify the receiving party of such error or oversight when such
18 error or oversight is discovered and shall specify in that notice the particular
19 document(s), tangible thing(s), testimony, or information to be returned to the
20 producing party or reclassified and shall specify the particular designation to be
21 applied. Thereafter, the receiving party shall treat such document(s), tangible thing(s),
22 testimony, or information in the same manner as if it had been properly designated or
23 classified originally, except to the extent that such information has already been
24 disclosed to individuals who otherwise would not have been entitled to have the
25 information disclosed to them in the first place. In the event that the information
26 referred to immediately above is disclosed to such individuals, the party failing to
27 make the initial designation may request the receiving party to retrieve the documents
28 and/or tangible things from such recipients. The receiving party shall use its best

1 efforts to retrieve the documents and/or tangible things from such recipients. The
2 disclosing party shall not be required to identify recipients if it believes that doing so
3 would reveal attorney work product or violate the attorney-client privilege.
4 Furthermore, any party who has received re-classified information and has not agreed
5 to be bound by this Order shall execute a statement (in the form of Exhibit A) averring
6 that they have read and understand this Order and agree to be bound by its terms.
7 Thereafter, the party failing to make the initial designation may seek relief from the
8 Court. In no event shall a disclosure of recipients be deemed a waiver of any privilege
9 or immunity.

10 If a party decides to add a designation to any document previously produced
11 without a designation, the producing party shall produce to the other parties substitute
12 copies of such documents bearing the desired designation. The parties to whom the
13 substitute copies of such documents are produced shall substitute the later produced
14 documents for the previously produced documents, and destroy or return to the
15 producing party the previously produced documents. The receiving party may
16 challenge such redesignation through the procedure set out at paragraph 10.

17 **15. Inadvertent Production of Privileged Information**

18 Inadvertent production of a privileged document or information or attorney
19 work product does not constitute a waiver of such privilege, attorney work product
20 status, or other protection. If a party inadvertently produces documents or information
21 that it considers privileged or otherwise protected from disclosure, in whole or in part,
22 or learns of the production of documents or information that it believes privileged or
23 otherwise protected from disclosure, the party may retrieve such documents or
24 information as follows:

25 (a) Within ten (10) business days of the date of discovering the
26 production of privileged or protected information, the producing party shall give
27 written notice to all other parties of the claim of privilege or other protection from
28

1 disclosure, the factual basis for asserting the claim, and that the production was
2 inadvertent.

3 (b) Upon the written notice of (a) above, the receiving party shall
4 promptly return and/or certify destruction of the originals and all copies of the
5 privileged or otherwise protected materials to the producing party. In the event that
6 only part of a document is claimed to be privileged or otherwise protected from
7 disclosure, the party giving notice shall also furnish to the other parties who have
8 received the document a redacted copy of such document, removing only the part(s)
9 thereof claimed to be privileged or protected.

10 (c) The provisions of subparagraphs (a) and (b) above are without
11 prejudice to any other rights any party may have with respect to challenging or
12 defending any claim of privilege or protection from disclosure, and the provisions of
13 this paragraph 15 shall not apply in the event the receiving party can show that the
14 production of the document or information at issue was not inadvertent. After the
15 return and/or destruction of the documents, the receiving party may contest the
16 producing party's claim(s) of privilege, work product, or other immunity from
17 disclosure and submit such issue to the Court for determination. That determination
18 shall be made without regard to the fact that any such document has been produced.

19 **16. Nonparty Reliance on Order**

20 In the event that a party seeks discovery from a non-party to this action, the
21 non-party may invoke the terms of this Order with respect to any information
22 provided to the parties by so advising the parties to this action in writing. Any such
23 non-party shall be permitted to appear in this action for purposes of protecting its
24 rights under this Order.

25 **17. No Waiver of Privilege**

26 Nothing in this Order shall be deemed a waiver of the attorney-client, work
27 product, or any other privilege or immunity, or of the right of any party to this action
28 to oppose production of any information or documents as being outside the scope of

discovery authorized by the Federal Rules of Civil Procedure or otherwise.

18. Disclosure of Confidential Information to Unauthorized Person

If Confidential Information is disclosed to any person other than those entitled to disclosure in the manner authorized by this Order, the party responsible for the disclosure shall immediately upon learning of such disclosure inform the designating party in writing of such disclosure, use its best efforts to retrieve Confidential Information, and shall make every effort to prevent further disclosure by the unauthorized person(s). Notwithstanding the foregoing, outside counsel of record are responsible for employing reasonable measures to control, consistent with this Order, duplication of, access to, and distribution of Confidential Information. Nothing in this Order shall prevent a party from moving the Court for an order of contempt or other such relief for any violation of this Order.

19. Nonparty Requests for Information Subject to This Order

If any party is subpoenaed in another action, served with a demand in another action to which it is a party, or is served by any legal process by one not a party to this action, seeking information that was designated as Confidential Information by someone other than that party, the party shall give written notice by hand or facsimile transmission within ten (10) business days of receipt of such subpoena, demand, or legal process to the party who designated the information, and shall object to its production to the extent permitted by law, setting forth the existence and terms of this Order. Nothing herein shall be construed as requiring the party or anyone else covered by this Order to challenge or appeal any order requiring production of information subject to this Order, or subject itself to any penalties for noncompliance with any legal process or order, or to seek any relief from this Court.

20. No Restriction on a Party's Use of Its Information

Nothing herein is intended to prohibit or restrict in any way the use or distribution by a party, or by its employees, witnesses, experts, or attorneys, of its own information.

EXHIBIT A
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

HARD CANDY, LLC, a Florida limited liability company,
Plaintiff,
vs.
SCOTT C. TUSCANI d/b/a "HARD CANDY", an individual residing in California,
Defendant.

) Case No. CV10- 2700 CAS (JEMx)
)
)
) **AGREEMENT TO BE BOUND BY**
) **PROTECTIVE ORDER**
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I, _____, declare and say that:

1. I am employed as _____
by _____.
2. I have read the Protective Order entered in Hard Candy, LLC v. Tuscani, Case No. CV10- 2700 CAS (JEMx), and have received a copy of the Protective Order.
3. I promise that I will use any and all information designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- COUNSEL ONLY," as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.
4. I promise that I will not disclose or discuss information designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- COUNSEL ONLY," with anyone other than the persons authorized under Sections 3 and 4 of the Protective Order.
5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the Central District of California

1 with respect to enforcement of the Protective Order.

2 6. I understand that any disclosure or use of information designated
3 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- COUNSEL ONLY," in any
4 manner contrary to the provisions of the Protective Order may subject me to sanctions
5 for contempt of court.

6
7 I declare under penalty of perjury that the foregoing is true and correct.

8
9 Date: _____

10 _____